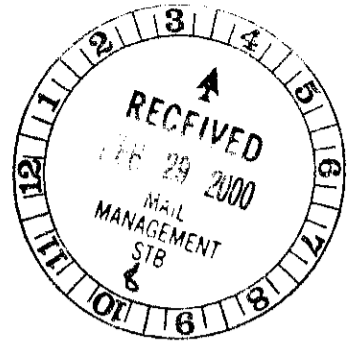




DONELAN CLEARY
WOOD & MASER, P.C.

197 229

February 29, 2000



Via Hand Delivery

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

RECEIVED
Office of the Secretary

FEB 29 2000

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Public Record

Re: STB Ex Parte No. 582, *Public Views on Major Rail Consolidations*

Dear Secretary Williams:

Please find enclosed for filing in the above-referenced proceeding an executed original and ten (10) copies of the Comments of Dow Chemical Company. Also enclosed is a 3.5-inch diskette containing a WordPerfect 7.0 formatted copy of this filing. An extra copy of the filing is enclosed for stamping and return to our office.

Should you have any questions concerning this filing, please do not hesitate to contact the undersigned. Thank you for your cooperation and assistance in this matter.

Respectfully submitted,

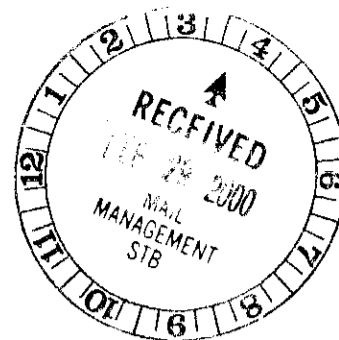
Jeffrey O. Moreno

Enclosures

ATTORNEYS AND COUNSELORS AT LAW

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB Ex Parte No. 582
PUBLIC VIEWS ON MAJOR RAIL CONSOLIDATIONS

FEB 29 2000

COMMENTS OF THE DOW CHEMICAL COMPANY

Part of
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The Dow Chemical Company (Dow) commends The Surface Transportation Board (STB) for initiating the Ex Parte No. 582 proceeding on rail consolidations and the future structure of the North American railroad industry. Dow has actively participated in most of the rail merger proceedings in the 1990s, including making a request for protective conditions for its Freeport, TX facility in the UP/SP merger. Dow has grown increasingly concerned, with each successive merger, about the consolidation of the rail industry and its negative effects on both service and competition.

As a preliminary matter, Dow wishes to emphasize that it has not yet developed a position on the proposed merger of The Burlington Northern and Santa Fe Railway Company with the Canadian National Railroad. Dow's comments in this proceeding reflect its general concerns regarding any future rail merger.

It is not possible to make a general statement that more rail consolidation is good or bad. Each transaction must be judged on its own merits. However, without adequate protection of competition, no rail merger is good.

The fact of the matter is that there is very little rail competition left for captive shippers, such as Dow at most of its facilities. In past merger proceedings, the STB has refused to protect bottleneck shippers despite substantial evidence that those shippers would be harmed. Instead,

the STB has adopted the "one-lump theory" to conclude that rail mergers do not harm bottleneck shippers. The result has been the creation of even longer bottlenecks and the further loss of competition and service alternatives.

There is widespread speculation that the proposed BN/CN merger would trigger a final round of consolidation among North American railroads. The next merger would most likely be between UP and CSX. This would have significant anticompetitive consequences for Dow at its Midland, Michigan facility, among several others. Raw materials, for Midland, are transported from the Gulf Coast by rail. That transportation is captive to the UP from the Gulf Coast to Chicago. Beyond Chicago, however, Dow can route the traffic to Midland via either CSX or CN. Although Dow would still have access to two rail carriers at Midland, a UP/CSX merger effectively would force this traffic onto a UP/CSX single line haul. This would deprive Dow of a competitive rate for the Chicago to Midland segment. But, the one lump theory says that Dow would not be harmed by this transaction.

Similarly, rail traffic moving east through the Mississippi River gateways would suffer a loss of competition if UP and CSX were to merge. For example, shippers located in the Shared Access Areas no longer would have a choice of using CSX or NS beyond the Mississippi River, because UP/CSX could force this traffic onto a single line haul. This also would be true of a merger between BNSF and an Eastern railroad. The one lump theory, however, would not consider this to be a loss of competition.

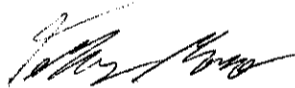
Once the final end game of rail mergers has played itself out, every carrier will have a long haul interest to protect. This will eliminate what little competition remains. At that point, the Board may have no effective options, short of open access, to address competitive concerns.

In addition to rates, the Board must focus its attention upon service levels. Extended bottlenecks will only reduce shipper options to respond to poor rail service. This is a very real concern in light of the service meltdown experienced by the UP after its merger with the SP and the service crisis currently affecting CSX and NS as a result of their acquisition of Conrail.

If the past is any guide, future rail mergers are likely to have negative effects on rail finances, capacity, and infrastructure. For years, railroads have sold their mergers to shippers and the STB with promises of tremendous benefits and improved efficiencies and the STB has accepted the railroads' estimates of those benefits without critical analysis. For the most part, these benefits have not materialized on anywhere near the scale that was promised. To the extent they have materialized, it has only been after a very painful and extended period of severe service problems. Wall Street certainly has not recognized the occurrence of the promised benefits. This has had the perverse consequence of taking capital value away from the railroads, which has made it more difficult for them to invest in badly needed infrastructure improvements and further degraded their performance levels.

The future of the North American rail system, under current STB policy, ultimately will be two Class I rail monopolists. There will be no competition because each carrier will have an interest in protecting its own long haul. Service will only degrade further as competitive incentives to improve service disappear. Dow urges the Board to review and reassess its merger policies in light of the unfulfilled promises of past mergers, reduced competition, and substantially declining service levels.

Respectfully submitted,



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